



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2014-0186]

RIN 1625-AA00

Safety Zone; Ohio River, Mile 803.5 to 804.5

Henderson, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, beginning at mile marker 803.5 and ending at mile marker 804.5. This safety zone is necessary to provide safety for recreational boaters that will be spectators at the Henderson Breakfast Lions Club Tri Fest fireworks. Commercial vessels are prohibited from entering into this area and all vessels are prohibited from entering into the area between mile markers 803.5 and 804.5 unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

DATES: This rule is effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0186]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Stephen F. McConnell, U.S. Coast Guard; telephone 502-779-5334, e-mail [Stephen.F.McConnell@uscg.mil](mailto:Stephen.F.McConnell@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

|      |                                 |
|------|---------------------------------|
| APA  | Administrative Procedures Act   |
| BNM  | Broadcast Notice to Mariners    |
| COTP | Captain of the Port             |
| DHS  | Department of Homeland Security |
| FR   | Federal Register                |
| LNM  | Local Notice to Mariners        |
| MM   | Mile Marker                     |

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

Publishing an NPRM for this temporary rule is unnecessary as the public is already aware of this event through a current regulation, and this temporary rule changes the event from the third weekend of April to the fourth weekend of April. The current permanent safety zone for this event is under 33 CFR 165.801, Table 1, no. 12. However, that regulation only covers the third weekend in April. Based on future scheduling for this annual event, the Coast Guard has coordinated with the event sponsor to list the dates in the CFR as the third or fourth weekend in April. This date change is included in a project to update

the list of recurring safety zones under 33 CFR 165.801, accounting for this event and other changes, however that rulemaking will not be published in time for this event. Completing the NPRM process for this event is also contrary to the public interest since immediate action is necessary to ensure the public is protected from the hazards associated with a fireworks display over and on the Ohio River during the event. Additionally, this event has been advertised to and planned for by the local community and delaying or forgoing a safety zone may interfere with contractual obligations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated with an air show and fireworks display over the waterway.

#### B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of

Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define safety zones.

The Henderson Breakfast Lions Club Tri Fest event, including a fireworks display over and on the Ohio River, will take place on April 25, 2014. Due to the possible hazards associated with this event, the COTP Ohio Valley is establishing a safety zone for all waters of the Ohio River beginning at mile marker 803.5 and ending at mile marker 804.5. This safety zone is necessary to provide safety for the public and marine traffic that will be in the area, including the recreational boaters and spectators attending the Henderson Breakfast Lions Club Tri Fest event on the Ohio River.

A permanent safety zone for this event is currently published under 33 CFR 165.801, as referenced above. This temporary rule is necessary to move the event from the third weekend of April to the fourth weekend of April.

#### C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a safety zone for all vessel traffic on the Ohio River between mile 803.5 and mile 804.5, extending the entire width of the Ohio River. Transit into and through this area is prohibited effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014. Deviation

from this safety zone is prohibited unless specifically authorized by the COTP Ohio Valley, or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1-502-779-5424 or can be reached by VHF-FM channel 16. The COTP Ohio Valley will inform the public through broadcast notices to mariners (BNM) of the enforcement period for the safety zone as well as any changes in the planned schedule.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary safety zone, effective from 9:00

p.m. to 9:30 p.m. on April 25, 2014, for vessels on all waters of the Ohio River from mile 803.5 to mile 804.5. Notifications of enforcement times will be communicated to the marine community via BNM and through local notice to mariners (LNM). The impacts on navigation will be limited to protecting persons and property from the potential hazards associated with the Henderson Breakfast Lions Club Tri Fest fireworks.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Ohio River, from 9:00 p.m. to 9:30 p.m. on April 25, 2014. This safety zone will not have a significant economic impact on a substantial number of small entities due to its limited scope and short

duration. Additionally, requests to deviate from the rule will be considered on a case-by-case basis. Notifications to the marine community will be made through BNM, LNM, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. This rule involves establishing a temporary safety zone to provide safety for the recreational boaters that will be spectators at the Henderson Breakfast Lions Club Tri Fest event.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, marine safety, navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the U. S. Coast Guard amends 33 CFR part 165 as follows:

#### PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to

read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-305, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0186 is added to read as follows:

§ 165.T08-0186 Safety Zone; Ohio River, Miles 803.5 to 804.5, Henderson, KY.

(a) Location. The following area is a safety zone: all waters of the Ohio River between mile 803.5 and mile 804.5, Henderson, KY, extending the entire width of the Ohio River.

(b) Effective dates. This section is effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

(2) Persons or vessels desiring to enter into or pass through the safety zone must request permission from the COTP Ohio Valley or a designated representative. They may be contacted on VHF-FM channel 16 or by telephone at 1-502-5424.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Ohio Valley or designated representative.

(d) Informational Broadcasts. The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned dates and times of enforcement.

Dated: April 4, 2014.

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R. V. TIMME,  
Captain, U. S. Coast Guard,  
Captain of the Port Ohio Valley.

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